

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHEVRON MINING INC.,

Plaintiff/Counter-Defendant,

vs.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
THE INTERIOR, UNITED STATES
DEPARTMENT OF AGRICULTURE,

Defendants/Counter-Claimants.

No. 1:13-cv-00328-PJK-JFR

ORDER on the PARTIES' JOINT NOTICE
REGARDING PRE-TRIAL PROCEDURES (ECF No. 221)

THIS MATTER came before the court on the parties' Joint Notice Regarding Pre-Trial Procedures filed September 9, 2021 (ECF No. 221). The parties have requested clarification and supplementation of the Case Management Order (ECF No. 216). Upon consideration thereof, the Case Management Order will be supplemented as follows:

Deposition Designations

The parties shall submit to the court a single set of completed designations (including counter-designations) by November 8, 2021. Chevron-sponsored testimony will be highlighted in yellow and United States-sponsored testimony will be highlighted in blue. Where Chevron and the United States have designated the same testimony, it

will be highlighted in green.

Treatment of Exhibits and Objections to Exhibits in Written Form

The parties have agreed that exhibits introduced in written, direct testimony may be cited and discussed in the pre-filed direct testimony and will be admitted at trial absent a bona fide objection contained in the Joint Exhibit List (CMO ¶ 1.4) to be filed January 17, 2022. In the event of such an objection, the party sponsoring the exhibit should (in the Joint Exhibit List) reference any additional foundation as necessary to address the objection.

Filing of Written Testimony and Exhibits

Paragraph 1.4 of the CMO shall be amended to provide that: “The parties shall submit exhibits by November 8, 2021 and all exhibits shall be pre-marked. The parties shall provide two courtesy hard copies to the court as well as the exhibits in electronic form on a disk or thumb drive.” Rather than filing each exhibit in CM/ECF, the court will use this procedure.

Insofar as identification of all trial exhibits by September 1, 2021 (CMO ¶ 1.1), the court’s intent was to have the parties make a good-faith effort to identify all trial exhibits that could be reasonably anticipated for use in pre-filed direct, cross, and redirect and anticipated rebuttal. This does not apply to rebuttal exhibits that cannot be anticipated before trial.

Rebuttal Testimony

Consistent with CMO ¶ 2.1, the court’s strong preference is that expert reports (including rebuttal expert reports given in reasonable anticipation of the need for such

testimony) should be disclosed sooner rather than later and be developed in pre-filed direct testimony. The parties' stipulation concerning a Chevron rebuttal witness (Randy Grip) allowing Chevron to submit pre-filed direct by November 5, 2021 is acceptable.

Trial Proceedings

The United States may offer its trial exhibits prior to the United States conducting cross-examination of Chevron's witnesses.

The CMO has been amended accordingly and is attached.

DATED this 14th day of September 2021, at Santa Fe, New Mexico.

/s/ Paul Kelly, Jr.
United States Circuit Judge
Sitting by Designation